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LETTER DATED 13 JULY 1994 FROM THE CHARGÉ D'AFFAIRES A.I. OF THE PERMANENT MISSION OF YUGOSLAVIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit the statement by the delegation of the Federal Republic of Yugoslavia in the Working Group on Succession Issues of the International Conference on the Former Yugoslavia.

I should be grateful if you would circulate the present letter and its annex as a document of the Security Council.

(Signed) Dragomir DJOKIĆ
Ambassador
Chargé d'affaires a.i.

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Annex

Statement by the delegation of the Federal Republic of Yugoslavia in the Working Group on Succession Issues of the International Conference on the Former Yugoslavia

1. In its statement of 17 May 1994, the delegation of the Republic of Croatia remained consistent in understanding the Working Group on Succession Issues of the International Conference on the Former Yugoslavia as a forum for promoting political propaganda and deception rather than seeing it as a place for constructive and equitable discussions which should lead to an agreement on regulating the consequences of the secession of parts of the Yugoslav Federation. It did not stop short even of a brazen distortion of truth in a thinly disguised attempt to attribute its own responsibility for the deceleration of the work of the Group of the Yugoslav side. The statement of the Croatian delegation is intended to hinder the work of the Group by political intervention precisely at a time when this work began to move out of an impasse, with prospects to be successfully completed. This intent of the Croatian side explains the allegations contained in its statement.

2. The delegation of the Federal Republic of Yugoslavia is accused in the said statement of allegedly refusing to cooperate which is evident from the reservations it has made in respect of the entire work done thus far on the inventory of assets and liabilities and the insistence on its own notions which are contrary to the principles of international law, the domestic laws and real relations in the former Yugoslavia. The very text of the accusation is eloquent proof of Croatia's ideas about "cooperation": the delegation of the Federal Republic of Yugoslavia should accept the positions and proposals of Croatia in full and without objection! Accordingly, the delegation of the Federal Republic of Yugoslavia would be considered "cooperative" if it renounced its legitimate interests, disregarded obvious facts and interpreted and implemented international law and the domestic law of the Socialist Federal Republic of Yugoslavia in the ways they suit the narrow interests of Croatia. The verbose statement of the delegation of Croatia made in an attempt to prove the responsibility of the delegation of the Federal Republic of Yugoslavia for the impasse in the work of the Working Group on Succession Issues is contrary to objective facts, the rules of international law and the domestic law of the Socialist Federal Republic of Yugoslavia.

3. One, the delegation of the Federal Republic of Yugoslavia attended all meetings of the Working Group on Succession Issues, including those with its officials. It participated very actively in its work, both by submitting written proposals and by making oral suggestions. There is no denying it that the delegation of the Federal Republic of Yugoslavia submitted the most exhaustive documentation, which is ample proof of its desire to speed up the work on succession. Notwithstanding all its efforts, the delegation of the Federal Republic of Yugoslavia has not been given equal treatment, and not only because of the sanctions. Up until December 1993 it was virtually discriminated against as a negotiating partner as its positions were frequently ignored, so that instead of being discussed, they were only taken note of most often as amendments to somebody else's proposals.

4. Two, it is true that the delegation of the Federal Republic of Yugoslavia actively participated in an attempt to work out an inventory as initially conceived, but it did warn that, short of a definition of State property, the inventory would not be possible to compile and adjust. Reservations on certain parts of that inventory were made also by other delegations, not only the delegation of the Federal Republic of Yugoslavia. The reservations of the delegations of Croatia and Slovenia exceed in number the reservations of the delegation of the Federal Republic of Yugoslavia. What is called the "Inventory" is in fact a mechanical sum total of diverse individual proposals. That it proved impossible to arrive at a solution in this way is due precisely to "the lack of an agreed definition of State property", as rightly stated in the Chairman's report on the valuation of assets and liabilities of the former Socialist Federal Republic of Yugoslavia, Group 5 (Economic issues), of 26 February 1993. This conclusion fully justifies the position of the delegation of the Federal Republic of Yugoslavia.

5. Three, there do not exist one's own (subjective) and general (objective) notions in the work of the Working Group on Succession Issues, as suggested by the delegation of Croatia in the accusation of the delegation of the Federal Republic of Yugoslavia that it insists on its own notions, rather than that there does exist a need to establish the content and scope of the legal standard and "State property", recognized by all sides as the object of succession negotiations. As "State property" as a property form did not exist in the Socialist Federal Republic of Yugoslavia (except in the 1946-1953 period), the negotiations are to establish which assets and rights in the Socialist Federal Republic of Yugoslavia had the character of "State property". In this regard (see the Vienna Convention on Succession of States as a possible reference source of legal rules) it is pointed out that the meaning of this legal standard is established in article 8 of the Vienna Convention as an expression of the positive international custom law in respect of the domestic law of a State, in this case the Socialist Federal Republic of Yugoslavia.

6. Proceeding from the domestic law, the law of the Socialist Federal Republic of Yugoslavia, the delegation of the Federal Republic of Yugoslavia is consistent in its position that "State property" includes all those assets and rights financed from the resources which were collected in a compulsory (State) way on the basis of decisions of the State organs of Yugoslavia and then allocated to, i.e., invested in, the entire territory of the Socialist Federal Republic of Yugoslavia. This position of the delegation of the Federal Republic of Yugoslavia is based on the detailed and indisputable documents of State organs and banks, as well as on the said legal acts of the Socialist Federal Republic of Yugoslavia. Contrariwise, the delegation of Croatia bases its position on the assertion that "State property" in the Socialist Federal Republic of Yugoslavia was only the property used by the Federal State organs of Yugoslavia. Oblivious of the Yugoslav reality in which private investments were of negligible magnitude, it reduces drastically and unjustifiably the number and value of assets and rights which are "State property", and in doing so, it considers that this property is located exclusively in the territory of the Federal Republic of Yugoslavia or in its possession. The delegation of Croatia provided no document or evidence of legal nature to corroborate "its own" notion of "State property". Consequently, even though it uses the term "common property" at various places in its documents, the delegation of Croatia reduces,

without a single objective argument, the size and value of the property only to the private property and rights, in the final settlement of which accounts it expects to be in the black. Hence its affinity for partial deals contrary to the agreed "package deal".

7. Bearing all that in mind, the assertion of the delegation of Croatia that the Federal Republic of Yugoslavia holds the preponderant part of the common property is untenable, since that property, movable and immovable, financial and other rights and assets, is located all over the territory of the Socialist Federal Republic of Yugoslavia, which is evidenced by the detailed and documented inventory submitted by the delegation of the Federal Republic of Yugoslavia. This inventory, and the relevant methodology, prove convincingly that the delegation of the Federal Republic of Yugoslavia not only does not procrastinate the negotiating process, but intends to accelerate it by its most immediate contribution, bearing always in mind that the results of its work, based on objective documentation, should be just and fair to all participants.

8. The delegation of Croatia misinforms international bodies about the true nature of the valorization methodology, the implementation of which the Yugoslav side advocates. It is quite erroneous to assert that all that enterprises have received from the State budget should be returned to the Federal Republic of Yugoslavia as creditor. Notwithstanding its insistence on the continuity, the delegation of the Federal Republic of Yugoslavia has consented that part of State property be apportioned and that unjustified enrichment be prevented. The precondition for such a division is the establishment of the property financed from budgetary resources irrespective of in which territory it is located. In other words, the Federal Republic of Yugoslavia and each seceded part of the Federation is credited for the allocated funds. Accordingly, the Federal Republic of Yugoslavia does not figure as a creditor, nor does this purely methodological approach constitute any creditor/debtor relation whatsoever. The sole purpose of the exercise is to establish the size and location of "State property". It does not prejudice the apportionment of the property, which is to be done only after a key has been jointly established, the discussion of which has thus far been only intimated rather than seriously initiated. This point that the delegation of Croatia keeps silent about invalidates the accusation that the Federal Republic of Yugoslavia is after seizing the State property or figuring as the creditor of others. However, the persistent refusal of the delegation of Croatia of this fair and reasonable principle according to which what has been jointly financed must also be the object of division cannot be interpreted differently but as an attempt to seize, by the refusal of this principle, part of the property which would not be based on a just and fair division.

9. The misinformation of the delegation of Croatia is not related only to the valuation methodology. It claims that out of 2,500 identified items in the Yugoslav version of the preliminary Inventory only 3 relate to the otherwise enormous value of the property of the former Federal Army. In the methodological explanation of the Inventory it is clearly said that the International Conference on the Former Yugoslavia has worked out a detailed list of military assets and that they are temporarily aggregated in the Inventory. The most recent version of the Yugoslav Inventory, completed on 30 April 1994,

contains about 9,000 items with detailed information on military assets, which is known to the Croatian delegation.

10. Pending the completion of negotiations on assets and rights from the common property ("State property" according to the domestic law of the Socialist Federal Republic of Yugoslavia) located in the territory of the Federal Republic of Yugoslavia or in its possession outside its territory (assets and rights abroad) and a conclusion of an agreement on the regulation of the consequences of secession, the Federal Republic of Yugoslavia is the holder of these assets and rights as a predecessor State. No legal or natural person, foreign or domestic, can take any act against these assets and rights which is not founded on the domestic law of the Federal Republic of Yugoslavia or international law. On the other hand, the seceded parts of the Yugoslav Federation hold in actual fact the assets and rights in their territories which were financed jointly and they are doing it without legal title. The stateship of these assets and rights is the consequence of legally inadmissible coercion - the secession from the Socialist Federal Republic of Yugoslavia.

11. Consistent with its customary manner of work, negotiations and behaviour at the International Conference on the Former Yugoslavia, the delegation of Croatia presents yet another accusation for which it provides no evidence whatsoever: it alleges that the Federal Republic of Yugoslavia has been spending the monetary gold and hard currency reserves to assist the Republic of Srpska and the Republic of Serbian Krajina. This accusation, just as any other unproved allegation, cannot be qualified otherwise but as slander irrespective of the fact that it is contained in an official document of a delegation.

12. The statement of the delegation of Croatia contains also other absurd allegations. It is so averred that the "use of the military assets of the former Socialist Federal Republic of Yugoslavia creates most serious problems" and that the assets have "been used in the aggression against democratically elected Governments". The absurdity of this assertion is in that the legal constitutional authority of the Socialist Federal Republic of Yugoslavia is being accused for very serious problems created in the civil war in that State, its activity within the internationally recognized borders of its State is being proclaimed "aggression", while the policy and practice of secessionist organizations and their leaders in parts of the territory of that State are proclaimed democratic Governments.

13. The a priori judgements of the Croatian side are contrary to the rules of international law and the customary practice in relations between States, for the violation of which Croatia accuses the Federal Republic of Yugoslavia. For example, the assertion in the letter of the head of the delegation of Croatia to the effect that the "State property of federal units, as well as property of other territorial entities, including communes and towns, is not the subject of succession either" is in direct contravention of the customary international practice (see article 1 (2) of annex XIV of the Peace Treaty with Italy of 1947; United Nations General Assembly resolution 530 (VI) on economic and financial provisions relating to Eritrea; the decision of the French-Italian Conciliation Commission of 1 December 1953, et al.).

14. What is remarkable is the intention of Croatia to legalize the act of secession by its overall approach. The Federal Republic of Yugoslavia does not deny that Croatia is a successor State. However, the term "successor State" implies exclusively the change of sovereignty on part of the territory of the Federal Republic of Yugoslavia in the sense of the transformation of that part of the territory in an independent State in accordance with the relevant rules of international law and the domestic law of the Socialist Federal Republic of Yugoslavia. The very act of the change of the territorial sovereignty is not automatically linked with the transfer of rights and obligations since such transfer implies the legality of the territorial change, i.e., that it has been carried out in accordance with the principles of positive international law and the domestic law of the Socialist Federal Republic of Yugoslavia. The recognition of Croatia as an independent State in its effective borders by third States and its admission to international organizations only respects the established factual situation, in the concrete case the constitution of a new sovereignty on part of the territory of the Socialist Federal Republic of Yugoslavia, but it cannot convalidate the illegality of the act of secession and its consequences. The Federal Republic of Yugoslavia, as the predecessor State, did enter the discussions in the Working Group on Succession Issues bearing these facts in mind with an intention to regulate by agreement the question of secession, with the aim of normalizing mutual relations, on the one hand, and the need to protect the interests of third entities (State or non-State), on the other.

15. Such an approach is accounted for by the nature of the situation created by secession and the unlawful acts which derived in no small measure from the secession. In an attempt to prejudge things, this approach in effect aggravates or even causes irreparable damage to reaching a just and fair settlement on the basis of agreement. Croatia, for instance, adopted a series of legal acts, limiting indirectly or confiscating the property of some categories of persons (e.g., article 3 of the Law on apartments on which there exists the tenant's right (The People's Gazette of the Republic of Croatia, No. 27/91)), i.e., the acts providing for an immediate taking over of the possession of the property of certain categories of persons (the Decree on the taking over of the possession and use of holiday houses, hotels and other tourist facilities and movables therein, the right of disposal, i.e., of property which is had or held by enterprises or other juridical or natural persons headquartered outside the territory of Croatia (The People's Gazette, No. 43/91)). Both groups of legal acts are basically directed against non-Croat citizens, i.e., enterprises which are not registered in the territory of Croatia. Particularly difficult are the consequences of such unlawful and discriminatory acts in the matter of citizenship. Croatia has adopted the Citizenship Law, which deprives a large number of persons of non-Croat origin citizenship rights, while the acquisition of citizenship is linked to conditions which are in part racist by nature.

16. Croatia accuses the Federal Republic of Yugoslavia that it is non-cooperative in the matter of State archives and reprimands indirectly the mediators in the Working Group on Succession Issues for having advised Slovenia "to reach an ad hoc bilateral agreement with the Federal Republic of Yugoslavia on this and other unresolved issues". In doing so, it deliberately overlooks the key fact, which after all it does ever so often, that immediately after the secession, Slovenia unlawfully seized part of the State Archives of the

Socialist Federal Republic of Yugoslavia (art. 12 of the "Ustavni zakon za izvedbo temeljne ustavne listine osamostojnosti in neodbisnosti Republike Slovenije", Uradni list, No. 1, of 25 June 1991). Even this flagrant violation of rights has not made the Federal Republic of Yugoslavia waver in its resolve to solve outstanding issues, including the question of State archives, in an equitable way and through a dialogue based on law.

17. A declarative invocation of international law by the Croatian side is convincingly borne out by the position of Croatia that the principle of agreement is one of the main causes of the lack of success in the work of the Working Group on Succession Issues of the International Conference on the Former Yugoslavia thus far. The true meaning of this qualification is in the call that the fundamental principle of equality and fairness be abandoned, which in positive international law has the status of jus cogens, that it be substituted for the right and justice of the "arguments" of force and enforcement.

18. Agreement as the basic principle in settling the outstanding issues of the Yugoslav crisis is incorporated in the very basis of the involvement of the European Union and the United Nations in the Yugoslav crisis. Since the Declaration of the Conference on Security and Cooperation in Europe (CSCE) on the situation in Yugoslavia, adopted in Berlin on 19 June 1991, the principles of agreement and consent have been confirmed as the basic principles of the settlement of the outstanding issues of the Yugoslav crisis in all relevant documents of the European Union and the United Nations. Croatia itself has invoked "agreement based on the generally accepted principles of international law" as the basis for resolving "all the problems of secession" in the letter that Croatian President Tudjman addressed to the President of the Council of Ministers of the European Community on 28 June 1991 (Presidency of the Republic of Croatia, Presidency of the Republic of Slovenia, Joint Professional Team, "an Alliance of Sovereign States", Zagreb and Ljubljana, 4 October 1990). The insistence of the delegation of Croatia that the principle of agreement be abandoned as the basic principle for solving the question of succession cannot be qualified otherwise but as turning a blind eye to international law and a call to discontinue the negotiations in the Working Group on Succession Issues under the auspices of the European Union and the United Nations.

19. The Federal Republic of Yugoslavia is convinced that it is possible to reach an acceptable solution on the basis of respect for the relevant rules of international law and in a procedure based on the logic of things and with the necessary measure of tolerance and compromise among all participants in the negotiations. It is the position of the delegation of the Federal Republic of Yugoslavia that the negotiating possibilities are far from being exhausted, especially on the basis of documentation material and methodological solutions. In case the negotiations in the Working Group on Succession Issues do not yield fruit, the Federal Republic of Yugoslavia expresses its readiness to enter constructive negotiations with successor States for the purpose of concluding agreements on solving relevant disputes by other means, including proceedings before a court of law.